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On the Road to the Rule of Law: Crime, Crime Control, and Public Opinion in China

Shenghui Qi · Dietrich Oberwittler

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Abstract Since 1978, the Chinese reform policy has brought fast economic developments and social change but also considerably higher crime levels. China's rapid modernization has resulted in a situation of increased opportunities and Durkheimian anomie. The Chinese government responds to the worsening crime situation with punitive criminal sanctions, especially under the 'strike hard' policy. However, a punitive crime control ideology and repressive criminal norms are neither effective in stopping the crime wave nor in compliance with the aim to establish the rule of law. After examining the negative effects the strike hard policy has brought to the Chinese criminal justice, we present findings from a recent web survey among Chinese students in Germany (N=ca. 900). We use these data to explore the punitive attitudes, esp. towards the death penalty, among the Chinese young elite.

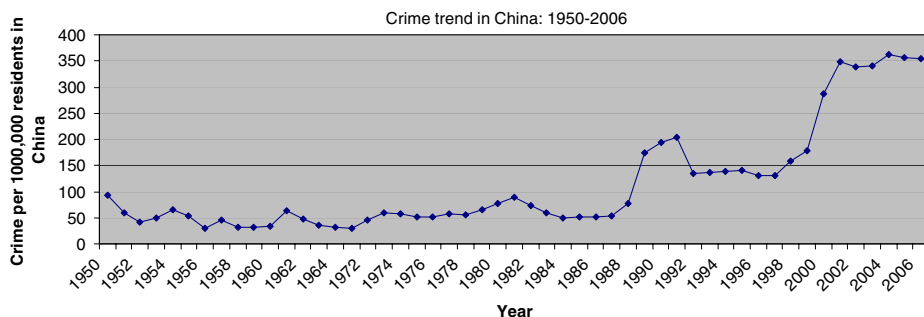
Keywords Crime control · China · Rule of law · Strike hard · Death penalty · Public opinion · Web survey

Introduction

Three decades have past since the initiation of the reform and open policy in 1978. According to the National Bureau of Statistics of China (2008), the economic reform towards a market economy has brought unprecedented economic growth with an annual economic growth rate of nearly 10%. The per capita Gross Domestic Product (GDP) grew from 381 Chinese Yuan in 1978 to 18934 Chinese Yuan in 2007. However, the very low recorded crime rates in China (Fairbank 1987; Dutton 1997; Deng and Cordilia 1999) gave way to an increase of crime even before the economic reform began (Graph 1). The crime rate has increased dramatically during the reform period, although it is still relatively low compared to international standards (Bakken 2005).

S. Qi (✉) · D. Oberwittler

Max-Planck-Institute for Foreign and International Criminal Law, Freiburg, Germany
e-mail: qishenghui@yahoo.com



Graph 1 Police recorded crime trend in China. Source: from 1950 to 1988, Deng and Cordilia (1999); 1989 to 2006, China Law Yearbook 1990–2007. The crime rates from 1989 to 2006 are based on the year-end total population numbers published on China Statistical Yearbooks. According to Chinese Criminal Procedure Law (§ 18), from 1997 on, the procuratorate is responsible for the registration for some offenses such as crime of embezzlement and bribery

The very low crime rates during the pre-reform era, which many Chinese citizens now miss, benefited greatly from the effective use of informal control (Deng and Cordilia 1999). The strong informal control may have been in part a genuine expression of a homogeneous “collective conscience” (Durkheim 1964), but was surely also an attempt to enforce strict rule abidance thought uniformity (Ren 1997). At that time, on the one hand, the ambitions to commit crimes were checked as the planned economy restrained individual needs (both materialistic and spiritual) and offered fewer opportunities, and on the other hand, informal and formal controls were most effective because of individual’s tight bonds to society and a strong repression of most types of deviance (Deng and Cordilia 1999). For Cao (2007), “the society free of crime was a by-product of the ruthless repression of all deviants within and outside the Party, real or imaginary.”

According to Hirschi (1969), “delinquent acts result when individual’s bond to society is weak or broken.” The modernization in China did not only liberate materialistic ambitions, as Deng Xiaoping encouraged a “getting rich is glorious” culture (Deng and Cordilia 1999; Zhao 2008; Cao 2007), it also speeded up the mobility of the population. Workplace and neighborhood, where the social bonds had been very strong and the informal control had been effective (Deng and Cordilia 1999), became less vital for individuals in China. China is now experiencing the biggest internal migration movement in history. Urbanization has reduced the proportion of rural residents in the total population from 82.1% in 1978 to 55.1% in 2007 (National Bureau of Statistics of China 2008). By the end of June of 2007, the migrant population in Beijing has reached 5.1 Million, while the population who hold a local residence amounts to 12 Million (Xinhua News, September 19, 2007). Crimes committed by the migrant population are increasing. For instance, of all criminal cases tried by the No.1 Intermediate People’s Court of Beijing, 12.5% were committed by the floating people in 1990, 13.6% in 1991, 22.6% in 1993, 25.9% in 1994, and 34.1% in 1995 (Ma 2001).

For the urban population, the workplace has ceased to act as a welfare agency and branch of government, responsible for supplying medical care, child care, housing, pensions, and lifetime employment (so called ‘Iron Rice Bowl’) as well as authorizing travel and job transfers (Deng and Cordilia 1999). The mobility of the population and greater attention for one’s own privacy preclude interventions by neighborhood committees. The collective forces are losing their authority gradually in China.

A state of anomie, whether according to Durkheim (1964) or to Merton (1938), has developed in China as a result of rapid modernization (Liu and Messner 2001; Deng and Cordilia 1999; Zhao 2008; Cao 2007). The economic modernization generates great materialistic ambitions and needs, while social bonds, the informal control relied on in the past, are weakening. Rising social inequality leads to increases in crime, as the unprivileged population lacks the legal means to achieve their goals (Cao and Dai 2001). At the same time, Cohen and Felson's (1979) routine activity approach can explain why higher living standards and more goods create a criminogenic context. An exact empirical assessment of the social forces driving the current crime development in China is beyond the scope of our paper. Yet, the Chinese criminal justice system undoubtedly faces the challenge to deal with the consequences of this development.

As the old informal rules and controls are no longer effective, China faces the task to find new rules and to rebuild effective social control, mainly through state criminal policies. The direction of the criminal policy is mainly determined by the ruling ideology and the country's current position on the road towards the rule of law. In the past six decades since the founding of the PRC, China experienced a four-stage legal experiment: (1) law as an instrument for class struggle before the Culture Revolution, (2) legal nihilism during the Cultural Revolution, (3) law as a pure instrument for social control during the construction period of the socialist legal system, (4) and beginning realization of the rule of law after 1997. The development of the role of the law in state policies has also brought changes in criminal policy. In this paper, we will focus on the current 'strike hard' policy which influences the Chinese criminal justice from all perspectives. The 'strike hard' policy, which decides the scope of capital crimes and the number of executions, offers a context to understand the Chinese death penalty system and practice.

Death penalty as an ultimate punishment almost always attracts the highest attention in the discussion of how to progress towards a humane and effective criminal policy respecting the rule of law. Public Opinion on the death penalty is one of the obstacles faced by the international abolition movement. While numerous studies on public opinion on the death penalty have been conducted in Western nations, this topic remains seriously understudied in China. Yet, it is of unique relevance for the study of punitiveness because in the case of China, traditional Confucian values and a socialist, totalitarian ideology blend in the support for a highly punitive criminal policy. Using data from a comparative student survey conducted in Germany in 2007, this paper explores the attitudes towards punishments including the death penalty among Chinese young elites. The comparison with German students is intended to sharpen the view on differences or communalities between Eastern and Western punitive attitudes.

On the Road to the Rule of Law

To know how far you are already on the road, it is necessary to know from where you began. In the following paragraph, we will look back to the role the rule of law has played in socialist China. As Foucault (1995) and Garland (2001) said, studying the history is studying the history of present for a better understanding of the present. History may also indicate some hints for the future.

The establishment of the People's Republic of China in 1949 made the world's most populous country not only the subject of a gigantic political, social, and economic experiment, but also the subject of a significant legal experiment (Cohen 1968). This

experiment began with the complete abrogation of all the laws and decrees of the Kuomintang period which were deemed as “reactionary” and “Western in spirit” (Zweigert and Koetz 1998; Cohen 1968). The new rulers began to establish a legal system that would suit the needs of the newly founded socialist China. The first Constitution was passed in 1954. In the criminal justice field, the old laws were replaced by only a few principal statutes, such as the Act for Punishing Counterrevolutionaries of 1951, the Provisional Act for Punishment for Crimes that Endanger State Currency of 1951, the Act for the Punishment of Corruption of 1952, the Arrest and Detention Act of 1954, the Security Administration Punishment Act of 1957. These laws served as an instrument to facilitate the class struggle. For the then communists, criminal punishment was only one coercive measure of the state and it had no goals in itself (Cohen 1968). The legal professionals from the old society were dismissed because they insisted on the principle of equality before the law, an idea which could not be tolerated by the class struggle ideology (Cohen 1968). From 1949 to 1957, although the law was deemed only as an instrument of control and repression as a form of totalitarianism, there was still a place for the law in social control.

From the end of 1957 onwards, the “rule of law”, which essentially means judicial independence, became overshadowed by the “rule of man”, i.e., the communists and later Mao Zedong himself (Van Straten 1986). This “rule of man” can not be confused with the Confucian concept of “rule of man”. The socialist “rule of man” served for obstacle-free manipulation of power (Luo 1998), while the Confucian “rule of man” wishes a well-ordered society which benefits the moralistic virtue of the righteous and selfless superior man through his behavioral exemplification (Ren 1997). With the outbreak of the “Great Proletarian Cultural Revolution” in 1966, the “leftists” dominated the Chinese Communist Party and this resulted in a virtual “withering away of the law” (Van Straten 1986). As the laws became meaningless, the apparatus of justice, which had been created in the Soviet image, broke down completely (Zweigert and Koetz 1998). The function of the prosecution was exercised by the police and the lawyers were hunted down as “rightists”.

After Mao Zedong’s death and the end of the cultural revolution in 1976, China started the program of the “Four Modernizations” and built a socialist legal system with Chinese characteristics, indicating that the government realized that economic development needs a solid legal infrastructure (Zweigert and Koetz 1998). In 1979, China introduced its first criminal law and criminal procedure law. This was undoubtedly a huge step towards the “rule of law”, but codification in itself is not sufficient. The rule of law demands not only that clear legal rules exist and are enacted, but also that they are fair and just. Until the middle of the 1990s, legal reforms in China aimed to achieve the goal that there were laws in the country. Socialist ideology still dominated the first criminal law and criminal procedure law. Both laws took Marxism–Leninism–Mao Zedong Thought as their guide (Article 1, Criminal Law of 1979; Article 1, Criminal Procedure Law of 1979). The primary task of the criminal law was “to use criminal punishment against all counterrevolutionaries” (Article 2, Criminal Law of 1979). The legal professions were reintroduced but the role of the defense lawyers was very limited, if not just as a decoration. Legal education was also reintroduced. But the ideology of socialist dictatorship was reflected widely in the textbooks (for instance, Gao 1982) in the early 1980s.

The shifting focus on economic reforms and the accompanying social change increased the demands for legal norms and the rule of law. The ideological color of the laws gradually faded. China revised its Criminal Law and Criminal Procedure Law respectively in 1997 and 1996. The socialist ideology, Marxism–Leninism–Mao Zedong Thought, was no longer mentioned as a guide for the laws. The Criminal Law of 1997 also changed the expression of counterrevolutionary crimes into “crimes of endangering

national security”. The basic principles of rule of law, such as *nulla poena sine lege* and the equality before the law were introduced into the revised criminal law, while the practice of analogy was abolished. In 1997, the 15th CPC National Congress decided to make “the rule of law” a basic strategy and “building a socialist country under the rule of law” an important goal for socialist modernization. In 1999, the sentence “the People’s Republic of China exercises the rule of law, building a socialist country governed according to law” was added to the Constitution. In 2004, the phrase “the state respects and guarantees human rights” was included in the Constitution. The legal experiment in China entered into a new era. Although still a one-party-state, China is already on the journey to the rule of law, no matter we still do not know how long this journey will take. The evaluation of the development of contemporary criminal policy should be based on the principles of the rule of law: *nulla poena sine lege*, judicial independence, equal protection, fair trial, etc.

Responding to Crime with Iron Fist: the Strike Hard Policy

An aspect of supreme significance in contemporary Chinese criminal justice is the ‘strike hard’ policy. ‘Strike hard’ requires that the state apparatus, including police, prosecution, and the courts, should crackdown on crime with **severity** and **swiftness**. Severity requires harsher punishments, while swiftness intends higher efficiency by quickening criminal proceedings. The repression policy behind this ideology is a heritage of the class dictatorship to suppress counterrevolution. According to Deng Xiaoping (1994: 372), the state should exercise the dictatorship over criminals who seriously endanger the social order, and no mercy should be given. Even in 1992, the then president of the Supreme People’s Procuratorate Liu Fuzhi still openly expressed the idea that the ‘strike hard’ is dictatorship (Liu 1992). Even under the current political context to build a ‘harmonious society’, the strike hard policy is still emphasized by the Chinese criminal policy makers as the harsh side of the new criminal policy ‘combining leniency and harshness’ (Luo 2005).

The regressive nature of the ‘strike hard’ policy is not completely strange to the Chinese legal tradition. As it is well-known, the Chinese legal tradition developed mainly from two adversarial ancient schools of thought: Confucianism and Legalism. As mentioned above, Confucianism prefers the behavioral exemplification of the superior man’s moralistic virtue. Good morality results in good behavior. Thus, Confucianism is deemed to be useful for crime prevention by building morality in the society. Legalism, on the contrary, emphasizes control through the formal laws. A punitive thought of the Legalism is that “in time of chaos, harsh laws are needed”, which is similar to the socialist authoritarianism. The strike hard policy is a modern realization of this traditional repression thought, although in an excessive way.

The first strike hard campaign was launched in 1983, in times of rapid and anomic economic take-off. The Standing Committee of the National People’s Congress started this strike hard campaign by issuing three decisions: *Decision Regarding the Severe Punishment of Criminals Who Seriously Sabotage the Economy* of March 8, 1982, *Decision Regarding the Severe Punishment of Criminals Who Seriously Endanger Public Security*, and *Decision Concerning the Procedure for Rapid Adjudication of Cases Involving Criminals Who Seriously Endanger Public Security*, both of September 2, 1983. The first campaign included three ‘battles’ and lasted to 1987. Until now, China has launched three strike hard campaigns in addition to the 1983 campaign, the other two were

launched in 1996 (from April 1996 to February 1997) and 2001 (from April 2001 to December 2002).

As to the effects of the strike hard campaigns, the crime trend displayed in Graph 1 indicated that they only had a short-run effect on crime rate trends during the crackdown period or shortly after. There are no signs that the punitive criminal policy was effective in changing the upward trend of crimes rates in China (Cao 2007).

However, the real effect of the strike hard policy was to cause disaster to Chinese criminal justice. The strike hard policy affects the Chinese criminal policy both at the legislative and judicial levels. We try to analyze the negative effects of this policy by differentiating severity and swiftness, although both aspects partly have a joint effect on the administration of criminal justice.

On the legislative level, severity means introducing new offenses or increasing the punishments. The criminal law of 1979 prescribed 114 offenses, 28 of them carrying the death penalty. To satisfy the need for repressive social control, before the criminal law was revised in 1997, 23 separate criminal acts were issued which brought 46 new capital crimes. The number of capital crimes reached 74. The new criminal law of 1997 reduced the number of capital crimes to 68, but it was mainly a technical change, because some old capital crimes were integrated by other capital crimes (Zhang and Liu 2000). The scope of capital crimes in China is not limited to the ‘most serious crimes’ set by Article 6(2) of the International Covenant on Civil and Political Rights. The death penalty can not only be imposed on violent crimes like murder, but also on non-violent crimes such as economic crimes.

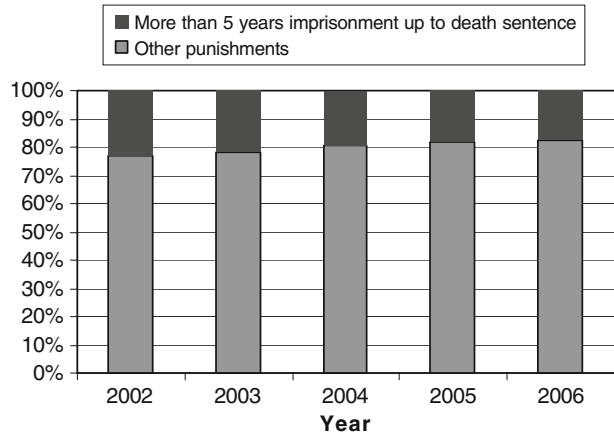
On the judicial level, the severity results in the frequent use of harsh punishments, especially the death penalty. There are official data to show that the first strike hard campaign launched in 1983 caused a massive increase in the use of the death penalty. On October 31, 1984, the Central Committee of CPC approved and forwarded a “*Report on the summary of the first battle for strike hard campaign against serious criminal offenses and the planning of the second battle*”. This report showed that 24,000 criminals were sentenced to death during the one-year first battle period (from August 1983 to July 1984)¹. The *Notification of the Supreme People’s Court on unified submission of death penalty case recoding files of April 9, 1984* pointed out, “since the beginning of the strike hard campaign, the number of recording materials for death penalty cases has increased dramatically.” Although official statistics about executions are no longer available because they are deemed as state secret in China, there are more reports on fragmented executions in different areas on the media². The harsher punishments during the campaigns clearly impaired the principle of proportionality, which China adopted in 1997. Article 5 of the Chinese Criminal Law of 1997 stipulates: “The degree of punishment shall be commensurate with the crime committed and the criminal responsibility to be borne by the offender.”

To measure the effect of the strike hard campaign on the sentencing practice, it would be useful to compare punishment decisions during the crackdown campaign and before or after the campaign. However, official judicial statistics in China are neither continual nor complete. Available data from a five-year period (2002 to 2006) provide some opportunity

¹ <http://www.people.com.cn/GB/historic/1031/3642.html>

² For instance, the report on 12 executions at the beginning of the third strike hard campaign in 2001: http://english.peopledaily.com.cn/200104/21/eng20010421_68242.html

Graph 2 Sentencing practice in China: 2002–2006. Source: China Law Yearbook: 2003–2007



to look at the effects of the 2001 to 2002 strike hard campaign. The category ‘more than 5 years imprisonment up to death sentence’ in Graph 2 includes fixed-imprisonment over 5 years, life imprisonment, and death penalty. These sanctions have been lumped together in order not to disclose the number of death sentences. Graph 2 shows that during the campaign in 2002, relatively more harsher punishments were imposed (23%), and in the following years, this share gradually declined until 2006 to 18%. This could be seen as evidence that sentencing practices were more punitive during the strike hard campaign (under the assumption that the volume and severity of crimes adjudicated by the courts remained constant).

In the deterrent logic of the hard policy, both swiftness and certainty of criminal proceedings are pivotal. The principle of swiftness influences the Chinese criminal policy mainly in the following three ways:

- (1) Deprivation of a fair trial. At the beginning of the strike hard campaign of 1983, the Decision Concerning the Procedure for Rapid Adjudication of Cases Involving Criminals Who Seriously Endanger Public Security reduced the appeal period from 10 to 3 days. The power of review and approval of death sentences for some offenses, such as murder and robbery, was delegated to the provincial higher courts for more than two decades, until it was been taken back to the Supreme People’s Court on January 1, 2007. The right of defence is also strongly limited in the Chinese Criminal Procedure Law of 1996. The suspect has no right to silence, nor a right against self-incrimination. The role of a defence counsel in the investigation stage is very limited. Although the council can meet the client to enquire about the case facts and to provide legal advice, an investigation official may be present. If a case involves state secrets, the meeting must be approved by the investigation organ. It is commonly admitted among the defence councils that access to suspects during the investigation stage is restricted (Albrecht 2006). The existence of the strike hard ideology made the Chinese government reluctant to strengthen the defence rights of suspects and accused, when such strengthening constitute an obstacle for the need to crackdown on crime. Since China decided to construct the rule of law, some significant efforts have been made to improve the procedural rights of the suspects and accused, besides the take back of power to review the death penalty to the Supreme People’s Court, from July 1, 2006 on, all court proceedings on death penalty appeal must be open to the public. The

amended Law on Lawyers, which came into effect on June 1, 2008, allows the lawyers to meet with their clients without being monitored by the investigation (Article 33).

- (2) Impairment of the judicial independence. The strike hard campaigns are launched in the style of a military mission and organized by the Chinese Communist Party. The Party's Political and Legal Commission is the leading organ of the campaigns and responsible to coordinate the collaboration between the police, the procuratorate, and the courts. There is little doubt that judicial independence cannot be upheld during crackdowns. Article 7 of the Chinese Criminal Procedure Law of 1996 provides a legal basis for the collaboration between the courts, the police, and the procuratorate: "In conducting criminal proceedings, the people's courts, the people's procuratorates and the public security organs shall divide responsibilities, coordinate their efforts and check each other to ensure the correct and effective enforcement of law." During the strike hard campaigns, it is reasonable to believe that collaboration rather than checks between these three organs is emphasized.
- (3) Theatre effect of punishments and strengthening the punitiveness. During the strike hard campaign, public arrests and sentencing rallies are routinely performed to show the state's authority in order to deter would-be criminals and educate the general public (Trevaskes 2004). The public arrest in China is a reproduction of the French theatre show of punishments (Foucault 1995). It dampens not only sympathy for the fellow human but also strengthens authoritarian beliefs which are positively linked to punitiveness (Jost et al. 2003).

Public Opinion on the Death Penalty

The Need to Study Public Opinion

Public opinion is frequently cited as a major reason in defence of the death penalty, sometimes even as an excuse to justify the retention of death penalty (Hood and Hoyle 2008; Schabas 2004). Relying on public opinion to defend the use of the death penalty does not seem to be a bad strategy, since the "voice of the people" cannot be ignored in a democratic society. Even more, as Nieburg (1984) pointed out, an inquiry into the decent opinions of all the citizens is thought to be the first duty of politicians and governments of any democratic system. In the United States, a liberal parliamentary democracy, not only the politicians and legislators pay great attention to the public opinion for electoral reasons. Also the U.S. Supreme Court, who may decide the fate of death penalty in the U.S. through its decisions interpreting the Eighth Amendment (the cruel and unusual clause) of the U.S. constitution, treats the public opinion as an indicator of the acceptance of death penalty by the public. In *Weems v. United States* (217 U.S. 349 [1910]), the court asserted that the proscription of cruel and unusual punishments "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." A similar statement appeared in *Trop v. Dulles* (356 U.S. 86 [1958]) that the cruel and unusual language "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." In its landmark decision *Furman v. Georgia* (408 U.S. 238 [1972]), the court accepted the idea of changing community standards embodied by these precedents but it reached no agreement about the current community standards, nor about the kind of evidence that might be accepted as a valid indicator of these standards. Although not directly referring to public opinion, the court in fact considered the public

opinion as one of the barometers for deciding whether the death penalty violates “evolving standards of decency” (Dike 1982). Justice Brennan tried to prove this from the opposite in *Furman v. Georgia*, as he emphasized the rejection of death penalty “by contemporary society is virtually total” as one of four principles to deny the death penalty, what Jeremy Bentham described as “popularity”, one property to be given to a lot of punishment (Bentham 1843). As Ellsworth and Gross (1994) predicted, if a clear majority of Americans comes to reject the capital punishment, the supreme Court, if not Congress and the state legislatures, will soon follow suit.

China, another strong retentionist country, although not a democratic country in the Western sense, nevertheless relies on the public opinion to refuse abolition in a foreseeable future. Put aside that the Chinese Communist Party asserts the public as the origin for all state powers, the reigning ideology, which empathizes social stability as the supreme goal, does not allow the state to ignore public opinion on the death penalty. At his press conference on March 14, 2005, the Chinese Premier Wen Jiabao answered the question whether China was planning to abolish the death penalty, “given our national condition, we will not abolish the death penalty”. A serious crime situation in the transitional Chinese society and the popular support for the death penalty are interpreted widely as two key elements of this “national condition”.³ Public opinion influences crime policies through different mechanisms. Often, politicians intervene into the still not totally independent criminal justice system if cases receive a great deal of public attention (Pan 2008). Independent of this outside influence, the Chinese courts are meant to consider public sentiments when they decide upon the question of the death penalty. The Supreme People’s Court (SPC) issued a “Resolution on further strengthening the criminal trial works” in 2007 which requires the courts to consider adequately the acceptance of the society and the public when deciding the imposition of the death penalty in criminal cases.

Two cases which provoked a lot of discussion in China illustrate very clearly the effect of public sentiment on the Chinese judiciary. In 2003, SPC sentenced Liu Yong, head of a crime ring in Shenyang, capital of Liaoning province in Northeast China, to death with immediate execution. Liu was sentenced to death with a two-year reprieve in the second-instance trial by the Liaoning Provincial Higher People’s Court which explained in its ruling that it “could not remove the possibility that Liu’s confession had been extracted through torture.” Never has an ordinary criminal case caused such a huge media coverage and public discussion before. The popular appeal for an immediate execution forced SPC, for the first time, to commence a retrial and to overturn the previous ruling of the second-instance trial. Another case took place more recently. Xu Ting, a young migrant worker who deliberately withdrew nearly 175,000 Chinese Yuan (ca. 17500€) from a malfunctioning ATM machine in Guangzhou, capital of the prosperous Guangdong province in South China, was sentenced to life imprisonment in the first trial. Under the current Chinese criminal law, people who steal 100,000 Chinese Yuan or more from a financial institution face a life sentence or death. Xu’s life imprisonment stirred a nationwide debate and many citizens and legal scholars alike expressed that Xu did not deserve such a severe punishment. The sentence was subsequently reduced dramatically in the retrial in April, 2008 to 5-year imprisonment, a sentence which required the approval of SPC because it was less than the prescribed punishment (Article 63(2), Chinese Criminal Law). SPC

³ Huang Ermei, the chief judge of the first Criminal Division at the Supreme People’s Court, explained the national conditions for which the death penalty could not be abolished. See http://news.xinhuanet.com/legal/2008-03/07/content_7738334.htm.

approved the sentence. Public opinion achieved a “victory” in both cases, even if the directions of the results were quite different. A more fundamental question is, however, what price the independence of justice has paid for the “victory” of public opinion.

Although these examples show that public opinion is important for Chinese criminal justice, yet the attitudes towards punishment in China are seriously understudied, even with respect to the most controversial sanction, the death penalty (Johnson and Zimring 2006). Only few surveys have touched the issue of the death penalty. The earliest survey measuring the Chinese attitudes towards the death penalty can be traced back to 1995, as the Law Institute of Chinese Academy of Social Science and the National Bureau of Statistics of China conducted a population survey in 1995 by distributing questionnaires to 5000 respondents in three Chinese provinces, using the single-item question “what is your attitude towards the death penalty?” 95% of the respondents supported the death penalty (Hu 2000). In a 2005 non-random student survey conducted in a college in Northwest China, 93.8% of the 1873 respondents thought murder should be threatened by death. Among the respondents, 81% were law students (Jia 2006). Scholars in the United States who are of Chinese origin attempted to get a cross-cultural comparison on the students’ attitudes towards the death penalty. Using student samples from China and the United States, Cao and Cullen (2001) explored cross-cultural differences and similarities in crime ideology. They concluded that Chinese and American ideologies overlap to a considerable degree, with respondents from both nations manifesting multidimensional views on crime causation and social control. Their study further suggested, despite these similarities, cultural differences, especially with regard to the exercise of state power within the criminal justice system. 78.2% of Chinese students agreed with the statement “I believe that capital punishment should be used because people who take a life deserve to be punished by having their own life taken,” while only 59.4% of Americans agreed. They also found that Chinese college students were more likely than American college students to favour rehabilitation as a method to deal with offenders in general. A great limitation of these finding is that the data were collected in 1988, which cannot reflect the political, economical and cultural changes China has experienced thereafter (Jiang et al. 2007). Comparing 524 Chinese students from a Chinese university and 484 American students from a university in the United States, Jiang et al. (2007) found nearly 70% of the Chinese sample supported the death penalty and about 60% did so in the United States. They further found that deterrence is the most important reason for the Chinese students supporting the death penalty, while retribution was for the Americans. Liang et al. (2006) compared Chinese college students both at home and in the United States to explore whether the exposure to Western values has an effect on the change of death penalty attitudes. That study proved that the incapacitation ideology related positively to pro-death penalty attitudes. When alternative punishments were provided, although the majority of respondents still favoured the death penalty, the magnitude of support and its significant sources of variability declined substantially. The study found further that the overseas Chinese students were more supportive of the death penalty than the students at home (83% vs. 62.7%, after providing alternatives 68.4% vs. 52.6%), contrary to expectation. The very small samples sizes (60 in China, 57 in the U.S.) should caution against putting too much weight on these findings. Below, we present the findings from our own survey.

Student Websurvey on Punitiveness and the Death Penalty

Following the examples of previous studies in North America, we pursued a survey among Chinese students currently studying at German universities, and in addition drew a sample

of U.S.-American and German students from the same universities for comparative purposes. The survey was designed as a web survey, with the option to fill in a shorter paper questionnaire sent out with the second reminder letter.

Eight German universities (of the 15 approached) participated in the study. Two of the eight are technical universities, five are located in the former Western and three in the former Eastern part of Germany. The sampling frame within the participating universities consists of all students of Chinese nationality (without citizens of Hong Kong, Macao and Taiwan), all students of U.S. nationality, and a random sample of German students drawn from those courses and departments predominantly chosen by Chinese students. The total number of students who were invited to participate are 2617 Chinese, 802 U.S. and 1075 German students. The U.S. sample will not be used in the following analyses because it is fairly small and displays a disciplinary shape which is very distinct from the Chinese and German sample, with the majority of students in social science and humanities courses, whereas the Chinese (and by definition also the German) students predominantly focus on natural sciences, engineering, health studies, law, economy and languages.

Personalized invitation letters in the respective first languages were sent by postal mail by the universities on behalf of the research institute. This procedure also helps to stress the anonymity of the data collection. The web survey was accessible only for invited students with a global password in order to protect the online questionnaire from unauthorized access. The questionnaire was available in German, English and Chinese. All students were sent two reminder letters, the second containing also a much shorter paper version of the questionnaire in order to boost participation especially among students who may be reluctant to participate in online surveys or who have had less time to spare. We did not give any monetary incentives. The survey took place in spring 2007.

The overall response rates are 35% (25% for the online version) for Chinese and 46% (37% for the online version) for German students (see Table 1). These results show that (1) the response rates are satisfactory for a web administered survey, yet (2) the option to fill in a paper questionnaire increases participation quite considerably, for the Chinese students by almost half.

This raises the question whether students who filled in the paper version answered differently from those who used the online questionnaire. In fact, very few items show significantly different distributions. For most of the key variables of interest, such as support for the death penalty, both interview modes produced indistinguishable results. Thus, we will report results for the total sample whenever questions occurred in both modes

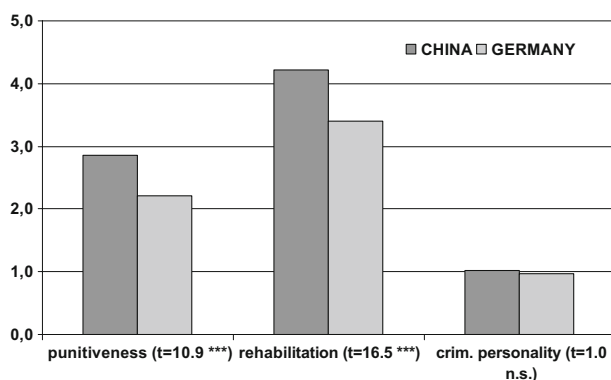
Table 1 Sample size and response rates

Student population		Web interviews		Paper interviews		Total	
		N=	%	N=	%	N=	%
China	2617	639	25.4 ^a	257	9.8 ^b	896	35.2
Germany	1075	413	37.0 ^a	96	9.0 ^b	509	46.0

^a Corrected for an estimated number of 35 Chinese respondents who answered the German version of the web survey and of whom only 13 can be identified and removed from the German sub sample

^b Percentage based on complete student population. Deducing one university which did not distribute paper questionnaires from the denominator, the response rates for the paper version would be 11.5% for China and 12.5% for Germany.

Graph 3 Mean differences between Chinese and German students in central scales of punitive attitudes



Footnote:

	China		Germany	
	N=	Missing values	N=	Missing values
Punitiveness	896	8.6%	515	4.7%
rehabilitation	896	7.8%	515	4.7%
Criminal personality	639	11.0%	419	5.5%

and results for the web sample only whenever a question was only used in the web questionnaire.

To measure attitudes towards crime, punishment, and related social cognitions, we employed scales consisting mainly of items which have often been used in previous research. However, cross-cultural survey research poses the difficult task of finding scales which represent reliable measurements of theoretical constructs in more than one country or language (Harkness et al. 2003). We excluded many items which showed signs of differential item functioning and retained only those items which showed similarly high factor loadings ($>.50$ with some exceptions) in all sub samples and lead to fairly reliable scales judged by their Cronbach's alpha values. This resulted in mostly short scales with modest reliabilities (see details in appendix, Table 4).⁴

Descriptive Results

We start the analyses of punitive attitudes by comparing the means of Chinese and German students for three central scales: 'punitiveness', 'rehabilitation', 'criminal personality'. While the first scale measures the belief in the need and effectiveness of harsh punishments (including the death penalty) to combat crime, the second scale measures the belief that offenders' social behavior can and should be improved by re-educative and inclusive instruments. The scale 'criminal personality' expresses the belief that the causes of crime rest with the offender's personality which is largely determined by inheritance. All three scales have been constructed following the study by Mascini and Houtman (2006). Graph 3 shows that Chinese students are not only significantly more punitive, but, at the same time, also significantly more supportive of the idea of rehabilitation than German students. While German students on average are slightly critical of the idea of harsh punishment with a

⁴ We would like to thank Philip Bornkessel and Andreas Daniel, sociology students at Bielefeld university, for their help in performing these analyses.

Table 2 General support for the death penalty

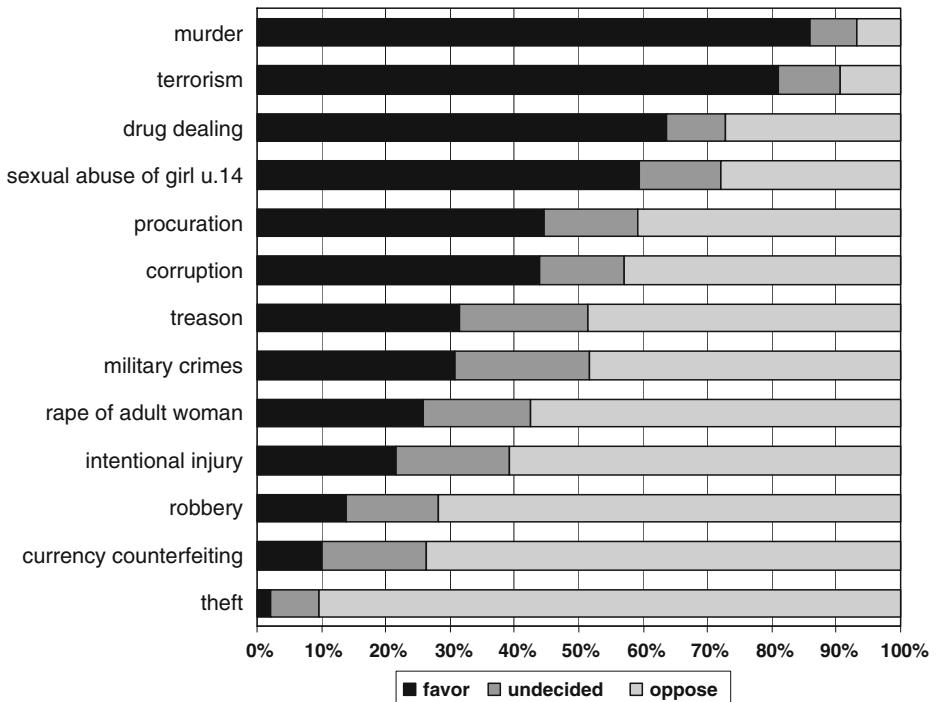
Q: "In general, do you favor or oppose the death penalty?"

	I am in favour	I oppose	I am not sure	Total
China	69,0	19,3	11,8	100%
Germany	10,5	72,0	17,5	100%

Cramer's $V = .58***$ China: $N = 896$, missing values = 1.5%; Germany: $N = 515$, missing values = 0.2%

mean value below the neutral mid-point of the Likert-type scale at 2.5, the Chinese are on average slightly positive. However, the idea of rehabilitation has much more support among both groups, and it does not appear that a more punitive attitude of the Chinese students is associated with a weaker belief in rehabilitation (see below for correlational analyses). Both groups are equally clear in an almost complete rejection of the idea that crime is caused by inherited defects.

How strongly do Chinese students support the death penalty which is a crucial facet of punitiveness (Table 2)? In response to a standard item measuring the general attitude towards the death penalty, 69% are in favor and 19% oppose this punishment; 12%,

**Graph 4** Support for the death penalty for specific crimes. China, $N = 896$, missing values 4.1% to 11.9%

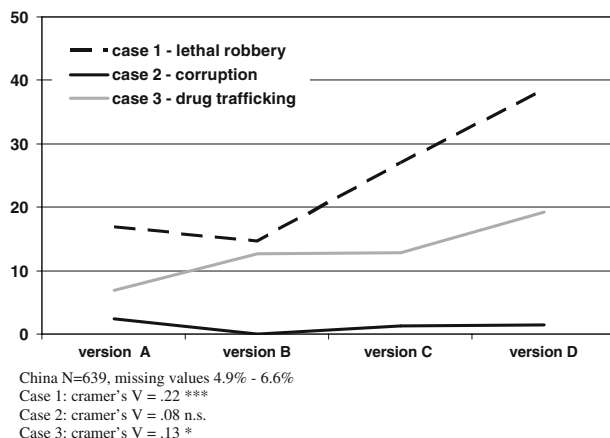
considerably less than German students, chose to be undecided. This confirms previous findings that there is a large majority of death penalty supporters among Chinese students, and is in a stark contrast to the reverse distribution among German students, of whom 72% oppose and only 10.5% favor the death penalty. Clearly, the respective criminal policies of the two countries are reflected in both the positive and the negative attitudes towards the death penalty.

Research in Western countries has attempted to call into question the seemingly monolithic and overwhelming support for the death penalty by using more specific and sophisticated questions on the death penalty (Cullen et al. 2000). We follow the same strategy in our study. First, if asked whether they support the death penalty for specific crimes, most respondents would limit its use to very few and serious crimes as murder and terrorism (Graph 4). 85% of the Chinese respondents support the death penalty as the highest penalty for murder. However, two non-lethal crimes, sexual abuse of children and drug dealing, are of enough symbolic salience for more than half of the Chinese respondents to justify the death penalty. All other crimes do not warrant the use of the death penalty in the eyes of the majority of Chinese students. Yet, a support of more than 40% for the death penalty for corruption and the organization of prostitution represents still a strong inclination towards this punishment.

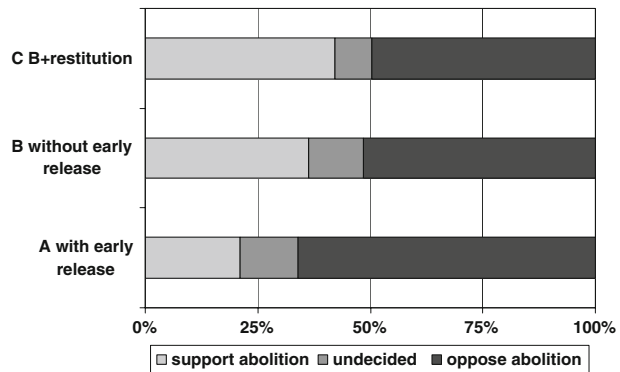
Second, previous research has often shown that respondents are much more reluctant to apply the death penalty if asked to choose a punishment in individual (hypothetical) cases. Again, this finding is confirmed in our survey. We take advantage of the technique of randomization to employ three different vignettes with a 2×2 factorial design resulting in four slightly different versions of each case in order to measure the elasticity of the respondents' penal preferences in reaction to varying degrees of offence severity and mitigating factors (for details of the vignettes, see Appendix). The randomized allocation of versions among respondents has the advantage that the resulting differences are solely attributable to the different cues given in the vignettes (Durham 1986; Goudriaan and Nieuwebeerta 2007).

The overarching finding represented in Graph 5 is that in none of the versions of the three vignettes does the support for the death penalty climb to 40% or more. In the most severe version of case 1, a repeat offender brutally robs and kills a woman with a knife, yet

Graph 5 Support for the death penalty in randomized vignettes



Graph 6 Attitude towards the abolition of the death penalty and its replacement by life imprisonment (3 randomized alternatives)



China, N=639, missing values 2%

Cramer's V = .13 ***

less than 40% of the Chinese respondents chose the death penalty as an appropriate punishment. In case 2 which is about a local official who takes bribes none of the varying circumstances justifies the death penalty for all but very few respondents, and in the drug trafficking vignette, the death penalty is chosen by only between 8% and 20% of respondents. These findings underline that for the majority of respondents, the death penalty is an exceptional punishment reserved for the gravest cases of murder.

A final question on the death penalty asks whether people would be ready to agree to its abolition if an alternative, harsh custodial sentence was available (Cullen et al. 2000). Again, we used the strategy to randomly give three different versions representing increasing levels of sanction severity (Graph 6). In the mildest version, the alternative to death penalty is life imprisonment with parole (the possibility of early release), in the more severe version, it is life imprisonment without parole, and in the most severe version, the prisoners' earnings are given to the victims' family as compensation. Each step results in a significant increase of the share of respondents who would agree to an abolition of the death penalty, yet 50% of respondents would still oppose abolition when offered the most severe prison alternative.

To sum up the descriptive findings reported so far, our survey confirms both the relatively high level of basic support for the death penalty among Chinese students and the findings from opinion research in Western countries that the support levels are considerably lower if one steps beyond the simple standard question and asks more specific questions about specific crimes and cases, or offers alternative sanctions which fulfill some of the aims of punishment which drive the support for the punishment (it remains questionable whether these alternatives really represent much of a penal progress, though).

Multivariate Analysis on the Correlates of Punitiveness

As the final step of analysis in this paper, we turn to multivariate analyses in order to find correlational patterns between support for the death penalty and other relevant social attitudes. Which attitudes and social cognitions differentiate supporters and opponents of the death penalty in China, compared to Germany? At this early stage of analysis, we prefer to talk about exploratory findings and correlates of punitiveness rather than about

explanations or even causes. More in-depth and multivariate analysis is necessary to establish the links between punitive attitudes and other domains of social perceptions and attitudes.

There is a long tradition in sociology, and especially social psychology, to associate punitive attitudes with more fundamental perceptions and interpretations of society and social relations. In the Durkheimian tradition, the need to punish deviants reflects the desire to emphasize and re-inforce social norms which are perceived as under threat by deviants (Durkheim 1992). In this perspective, punitiveness is related to anxieties about social decline (of which norm breaking is one symptom) and a lack of social cohesion (Maruna and King 2004; Tyler and Boeckmann 1997). Moreover, in Western societies, punitiveness is often seen as a part of ideological cleavages, i.e. the support for harsh punishments, and of the death penalty is seen as associated with conservative and authoritarian mentalities (Jost et al. 2003).

Only some of these hypotheses and their applicability to China are put to a test in the regression models reported in Table 3. We intend to test the following hypotheses: (1) support for the death penalty is an indicator of punitiveness more generally, thus people who are more punitive are also more likely to support the death penalty reflecting consistency in penal attitudes; (2) rehabilitation as an aim of punishment distinct from deterrence and retribution is negatively associated with support for the death penalty; (3) belief in criminal personalities and implicitly the belief that (some) criminals cannot be reformed is positively linked to support for the death penalty (4) authoritarianism is positively associated with support for the death penalty via its low tolerance for rule breaking and deviance in general, (5) strong fears and concerns about crime as a societal problem as well as low generalized trust are positively related to support for the death penalty.

The models reported in Table 3 use the scale ‘support for the death penalty for specific crimes’ as dependent variable because it fine-grades the death penalty attitudes and is suitable for OLS regression analysis. Although not reported in detail, socio-demographic control variables used in the models include age, sex, and father’s SES. The only significant correlation between socio-demographic variables and the outcome is a negative effect of age on support for the death penalty for the German subsample: younger students are more

Table 3 Regression of the support for the death penalty for specific crimes on related social attitudes

	CHINA			GERMANY		
	beta	t-value	sign.	beta	t-value	sign.
intercept	0.19	1.6		0.12	1.7	
punitiveness	0.40	8,5	***	0,29	5,3	***
rehabilitation	−0,05	−1,2		−0,15	−3,2	**
criminal personality	0,09	1,9	+	0,02	0,4	
authoritarianism	0,02	0,4		0,22	3,8	***
generalized fear of crime	−0,04	−1,0		−0,01	−0,3	
generalized trust	−0,02	0,7		−0,16	−3,4	***
R²	.19			.28		

(controlling also for sex, age, and father’s SES)

punitive in Germany than older students. Notably, sex does not have an effect on the death penalty attitudes for Chinese nor for German students.

Hypothesis (1), which is a test of consistency rather than a substantial theoretical argument, is strongly supported by the empirical findings, both for Chinese and German students. In fact, it turns out to be almost the only significant predictor in the Chinese model because it shares some variance with other predictors and mediates their correlational influence on the outcome. Only 'criminal personality' approaches significance independent of general punitiveness. On the level of zero-order correlations (not reported), also authoritarianism ($r=.19$) and rehabilitation ($r=-.08$) show significant correlations in the expected directions. Neither trust nor fear of crime are correlated with support for the death penalty in the Chinese sample even on the bivariate level.

In contrast, the regression model for the German subsample shows more and stronger effects resulting in a larger share of explained variance ($R^2=.28$ vs. $.19$ for the Chinese sample). There are moderate effects of rehabilitation, authoritarianism and trust independent of the overwhelming effect of punitiveness.

These findings, which we would interpret as a starting point rather than a consolidated result, show that support for the death penalty is harder to predict in China in the context of broader attitudinal patterns compared to European countries. One of the main reasons for this probably is the fact that levels of support for the death penalty are so much higher in China, which reflects the basic acceptance of state criminal policies by most Chinese citizens. To support the death penalty, which is a basic fact of life in China, it does not need particular social attitudes which supporters of the death penalty in Western countries typically hold, nor is it an issue of ideological cleavages between conservatives and progressives, as it is the case in public opinion in the U.S.

Conclusion

Chinese crime rates have increased during recent modernization. The old informal rules which kept crime under control for many decades are no longer functional. After building a socialist legal system with Chinese characteristics during the first two decades since the initiation of economic reforms in 1978, China is now on the road to the rule of law. In the criminal justice field, China has made much praiseworthy progress, e.g. the introduction of *nulla poena sine lege* into criminal law in 1997. However, as the strike hard policy most forcefully shows, criminal law in China is still an instrument of repression. Authoritarianism is still the reigning ideology of the state. However, the rule of law requires a balance of treatment and protection. In *State v. Makwanyane & Another* (Case No. CCT/3/94, 1995), which outlawed the death penalty in South Africa, Arthur Chaskalson, the President of the South African Constitutional Court argued eloquently, "the very reason for establishing the new legal order, and for vesting the power of judicial review in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process." Repression, even of criminals, is not compatible with rule of law. The student survey shows that even the young Chinese elites are very punitive. Short of saying that the punitive criminal policy in China caused popular punitiveness, we would argue that the

Chinese state provides a punitive culture to its citizens which contributes to and reinforces popular attitudes.

Yet, we do not think that public support for the death penalty is a good reason for a retentionist state to refuse abolition. As scholars analyzing the abolition movement (Hood and Hoyle 2008; Zimring and Hawkins 1986) have pointed out, the death penalty has been abolished in West Germany, the United Kingdom, France and Canada despite a majority support for it. As Zimring and Hawkins (1986) have observed, the support for the death penalty usually diminishes after its abolition. For instance, the support level for the death penalty in West Germany has dropped from 55% in 1950 to 23% in 2000 (Noelle-Neumann and Koecher 2002).

This shows that the relationship between public opinion on the death penalty and the death penalty itself works like a vicious circle: State policies and legal practices influence public opinion, and public opinion then becomes a force of resistance against reforms of state policies. Therefore, one should not postpone abolition until public opinion has finally changed, but change the criminal policies without waiting for public opinion to change.

Appendix

Table 4 Attitude scales with reliability measures

Items	Labels	Germany	China
	punitivness Cronbach's Alpha=	,799	,766
punit1r	People who break the law should be given stiffer sentences.	,509	,458
punit4r	The death penalty deters future criminals	,548	,595
punit5r	Harsh punishments only harden young offenders and aggravate the crime problem.	,444	,387
punit6r	Young people would commit less crime if jail sentences were tougher	,694	,637
punit8r	Severe penalties deter potential felons	,721	,610
	rehabilitation Cronbach's Alpha =	,495	,729
punit9r	The judiciary should make efforts to prevent ex-convicts feeling excluded from the community	,223	,456
punit10r	Re-education is an effective instrument for solving crime	,223	,674
punit11r	Community service orders increase convicts' feelings of responsibility	,387	,564
	criminal personality Cronbach's Alpha =	,629	,642
cause1r	Murderers and rapists commit crime because they have evil minds	,370	,344
cause2r	Criminality is largely hereditary	,391	,447
cause4r	Once a thief always a thief	,436	,479
cause6r	Most inmates are born criminals	,544	,483
	authoritarianism Cronbach's Alpha =	,622	,596
autor1r	Obedience and respect for authority are the most important virtues children should learn	,463	,424
autor2r	Most problems would be solved if we could somehow get rid of immoral people	,391	,375
autor3r	One good way to teach children right from wrong is to give them a good spanking when they misbehave	,463	,418

Table 5 Description of randomized vignettes (three cases with different levels of severity and mitigating factors)

Case 1	Lethal Robbery
Version A (less serious + mitigating)	A man aged 28 who is a drug addict has robbed a woman at night and wounded her with a knife because she refused to hand over her purse. She died two days later in hospital. He ran away with her purse containing 200 Yuan/Euro/Dollars. The offender had been in prison once before for robbery.
Version B (less serious + not mitigating)	A man aged 28 has robbed a woman at night and wounded her with a knife because she refused to hand over her purse. She died two days later in hospital. He ran away with her purse containing 200 Yuan/Euro/Dollars. The offender had been in prison once before for robbery.
Version C (serious + mitigating)	A man aged 28 who is a drug addict has robbed a woman at night and stabbed her several times in the chest, causing her to die within minutes. He ran away with her purse containing 200 Yuan/Euro/Dollars. The offender had been in prison once before for robbery.
Version D (serious + not mitigating)	A man aged 28 has robbed a woman at night and stabbed her several times in the chest, causing her to die within minutes. He ran away with her purse containing 200 Yuan/Euro/Dollars. The offender had been in prison once before for robbery.
Case 2	Corruption
Version A	A local official has taken bribes amounting to 50,000 Euro/Dollar over 10 years from a building company in order to gain public contracts. The woman has a family with two children.
Version B	A local official has taken bribes amounting to 50,000 Euro/Dollar over 10 years from a building company in order to gain public contracts. The man has a family with two children.
Version C	A local official has taken bribes amounting to 500,000 Euro/Dollar over 10 years from a building company in order to gain public contracts. The woman has a family with two children.
Version D	A local official has taken bribes amounting to 500,000 Euro/Dollar over 10 years from a building company in order to gain public contracts. The man has a family with two children.
Case 3	Drug trafficking
Version A	A woman aged 24 is caught at an airport and found guilty of smuggling 400g of heroin. She also has a previous conviction for drug dealing. She is married and has a six-month old baby.
Version B	A woman aged 24 is caught at an airport and found guilty of smuggling 400g of heroin. She also has a previous conviction for drug dealing. She is single and has no children
Version C	A woman aged 24 is caught at an airport and found guilty of smuggling 5kg of heroin. She also has a previous conviction for drug dealing. She is married and has a six-month old baby.
Version D	A woman aged 24 is caught at an airport and found guilty of smuggling 5kg of heroin. She also has a previous conviction for drug dealing. She is single and has no children.

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